

### **REMARKS**

Applicants received a response dated November 5, 2003 to a Petition to Withdraw a Holding of Abandonment, filed on August 27, 2003. According to the response, the request was denied. Although Applicants respectfully disagree with the position taken by the Office, to further prosecution they are submitting herewith a Petition to Revive (unintentional abandonment). Also submitted herewith is a request for a CPA. The request is believed to be proper since the present application was filed before May 29, 2000.

In support of that Petition, Applicants respond to the outstanding obviousness rejection under 35 USC §103 in view of Herron (US Pat. 4,764,521); Rubenstein (Am. J. Respir. Crit. Care. Med. Vol. 157: 484 (1998)); and Welch et al. (U.S. Pat. No. 5,981,592).

As an initial matter, Applicants disagree with the rejection for reasons of record. See e.g., the response submitted on October 2, 2002.

Moreover, the cited documents fail to teach or suggest the present invention in a manner to sustain a rejection under 35 USC §103.

As the rejection is understood, Herron is cited for its report of substituted aryl carboxylic acids which allegedly are useful to treat certain respiratory diseases.

Rubenstein is cited for its report of unsubstituted aryl carboxylic acid, 4-phenylbutyric acid which are supposedly useful for treating cystic fibrosis.

Wechter et al. is cited for its disclosure of certain aryl carboxylic acids.

The rejection is traversed. The cited documents, even if combined, do not teach or suggest Applicants' claimed invention in a manner sufficient to sustain a rejection under 35 U.S.C. §103.

Rubenstein in particular has been taken out of context by the Office. As understood, the reference as relied on is limited to a discussion of a study involving clinical results of oral sodium 4-phenylbutyrate. The reference does not teach, suggest or provide any motivation to use the invention with an unsaturated carbon chain, either alone or in combination with the other cited references.

Accordingly, the rejection is properly withdrawn.

For example, it is well-known that to establish a *prima facie* case of obviousness, three basic criteria must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference(s) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP § 2143.

There is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the cited references to make the claimed invention, nor is there a reasonable expectation of success.

In view thereof, reconsideration and withdrawal of the §103 rejection is requested.

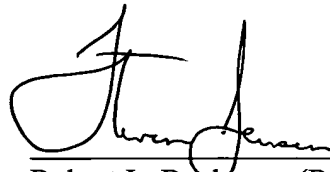
Support for new claim 44 can be found throughout the instant disclosure including the Drawings and claims as filed originally. See eg., pg. 27, lines 15-19. No new matter has been added by virtue of the new claim.

It is believed the application is in condition for immediate allowance, which action is earnestly solicited.

Although it is not believed that any fee is needed to consider this submission, the undersigned authorizes the Examiner to charge Deposit Account No. 04-1105 should such fee be deemed necessary.

It is believed the application is in condition for immediate allowance, which action is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steven M. Jensen", written over a horizontal line.

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Date: January 16, 2004

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